UNITED NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/618
3 November 1993

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 618

Case No. 606: SZENTTORNYAY

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero; Mr. Mikuin Leliel Balanda;

Whereas at the request of Jebon Szenttornyay, a former staff member of the United Nations Conference on Trade and Development, hereinafter referred to as UNCTAD, the President of the Tribunal, with the agreement of the Respondent, successively extended to 30 November and 31 December 1992, the time-limit for the filing of an application to the Tribunal;

Whereas, on 18 December 1992, the Applicant filed an application requesting the Tribunal:

"... to rule that:

(i) The Respondent contravened the basic rules and principles of good administration, and her right to equal pay for equal work, by assigning her additional and higher level functions against a higher level post for nineteen years, without the commensurate financial compensation.

(ii) The Respondent made a commitment but failed to take the necessary administrative measures for classifying her functions at the G-7 level, the level of the post which she had been encumbering for nineteen years.

(iii) As a result of the Respondent's failure to discharge his obligation under the principle of equal pay for equal work, and to fulfil his commitment to have her functions reclassified at the G-7 level, the Applicant suffered financial losses in salaries, allowances and pension benefits.

(iv) The Applicant is entitled to payment of a sum of $25,000 as compensation for the injury she sustained as a result of the administrative irregularities, action and inaction, including non-payment of appropriate salaries and special post allowances, committed by the Respondent in connection with her case."

Whereas the Respondent filed his answer on 30 April 1993;

Whereas the Applicant filed written observations on 12 August 1993;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations on 18 July 1960. She was initially offered a three-month short-term appointment at the G-3, step I level as a Clerk/Stenographer. On 18 October 1960, she was granted a probationary appointment and on 1 July 1962, a permanent appointment. On 16 January 1963, the Applicant was transferred to the International Trade Relations Branch of the Department of General Economic Research and Policies and on 1 May 1966, she was promoted to the G-4 level as Secretary. On 1 January 1971, the Applicant was reassigned to the Office of the Secretary-General of UNCTAD. On 1 April 1972, the Applicant was promoted to the G-5 level and her functional title was changed to Professional Assistant. The Applicant was promoted to the G-6 level, with effect from 1 June 1991, with the functional title of Information Network Assistant. She separated from the service of the United Nations on 31 March 1992.

In July 1982, the International Civil Service Commission had approved the establishment of a seven-level grading structure (to replace the existing five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. Accordingly, all General Service posts in New York were classified under procedures set forth in administrative instructions ST/AI/301 of 10 March 1983 and ST/AI/301/Add.1 of 12 July 1983.

In accordance with the administrative instructions, on 16 January 1984, the Applicant, whose functional title at the time was Reference Assistant and her supervisor, prepared a job description of the post she encumbered - numbered EG-7-005115 - for initial classification. The Classification Review Group classified the post at the G-5 level in the Library Related occupation.

In a letter dated 9 June 1986, addressed to the Assistant Secretary-General for Personnel Services, the Applicant appealed the initial classification of the post, arguing that it should be classified at the G-7 level, essentially on the grounds that the functions of the post were not properly described. The New York General Service Classification Appeals and Review Committee (NYGSCARC) reviewed the case and recommended that the post be classified at the G-5 level. The Assistant Secretary-General for Personnel Services informed the Applicant, on 10 February 1987, of his decision to accept the recommendation.

In a memorandum dated 27 February 1987, addressed to the Assistant Secretary-General for Personnel Services, the Applicant appealed the classification recommendation by NYGSCARC and submitted a new job description signed by the Chief of the UNCTAD New York Office and approved by the UNCTAD Administration in Geneva. Having received no reply, on 12 May 1987, the Applicant inquired as to the status of her appeal. On 16 June 1987, the Chief, Administrative Review Unit, informed the Applicant that the Classification Section

of the Office of Personnel Services was conducting a review of all staff, who like herself, had requested a review of classification decisions based on the recommendations of NYGSCARC. After this review, the cases would be resubmitted to NYGSCARC.

On 30 September 1988, the Officer-in-Charge of the UNCTAD New York Office wrote to the Chief, Compensation and Classification Service, Office of Human Resources Management[1] (OHRM), asking that the Applicant's functional title be changed to "Documentation and Information Assistant". At the same time, he informed him that, on account of the "recent restructuring of the New York Office of UNCTAD", the Applicant would assume "additional responsibilities". He emphasized that the Applicant's post should be classified at the G-7 level. In a reply dated 20 October 1988, the Chief, Compensation and Classification Service, OHRM, informed the Officer-in-Charge of the UNCTAD New York Office that the Classification Service would transmit to NYGSCARC their views on each case after conducting "a thorough analysis for each Tribunal appeal case, including the use of the appropriate functional title."

On 16 May 1989, the Applicant's case was resubmitted to NYGSCARC after review and analysis by the Compensation and Classification Service, OHRM.

NYGSCARC reviewed the Applicant's case at its meeting held on 15 March 1990. According to the minutes of the meeting,

> "The Committee noted that the title of 'Information and Documentation Assistant' proposed by the appellant was not an official title and as such, could not be assigned to the post. Accordingly, the Committee recommends that the post be maintained at the GS-5 level in the Library Related occupation."

On 17 May 1990, the Chief, UNCTAD New York Office, conveyed to the Assistant Secretary-General, OHRM, that the UNCTAD Adminis-

---

[1] Successor of the Office of Personnel Services

tration lent its "full support ... to the appeal of [the Applicant]" and informed him that UNCTAD was "committed to find the way on how to implement the final decision on the appeal."

The Assistant Secretary-General, OHRM, approved NYGSCARC's recommendation on 4 June 1990. On the same date, and in two separate communications, he informed the Applicant and the Officer-in-Charge of the UNCTAD New York Office of his decision. In addition, on 8 June 1990, the Assistant Secretary-General, OHRM, wrote to the Chief of the UNCTAD New York Office, explaining the grounds for his decision.

On 10 August 1990, the Director, Programme Support and Management Services, wrote to the Assistant Secretary-General, OHRM, to convey UNCTAD's "position that the [Applicant's] functions merit a significantly higher grading than the G-5 level." He expressed the hope that OHRM would "find it possible to review the matter and to come to a mutually acceptable solution outside the formal recourse channels." In a reply dated 5 February 1991, the Assistant Secretary-General, OHRM, informed the Director, Programme Support and Management Services, that: "As the case has already been reviewed by the New York General Service Classification Appeals and Review Committee and a decision taken, it is not possible to revert to them." He suggested that UNCTAD "review the situation further to determine whether a suitable higher level post could be identified to which [the Applicant] might be transferred."

On 1 March 1991, the Applicant sought the Secretary-General's agreement for submission of her appeal directly to the Tribunal. In a reply dated 24 April 1991, the Assistant Secretary-General, OHRM, advised the Applicant that:

> "The Secretary-General considers that your request to appeal the classification decision is time-barred and is thus not receivable.
>
> You may appeal this ruling on receivability directly to the Tribunal and, if the Tribunal considers that your claim is not time-barred,

> Respondent would agree that the Tribunal could then consider the merits of your appeal against the decision concerning classification of post No. EG-7-005115 which you encumbered."

On 16 May 1991, the Applicant submitted a further job description of the post she encumbered which was signed by the Applicant and by the representative of the New York UNCTAD Office. The post was identified as "EG0093115, formerly EG-7-005115" and classified at the G-6 level, with the functional title of Information Network Assistant. The Applicant was promoted to the G-6 level, with effect from 1 June 1991.

In the meantime, the Applicant appealed, to the Administrative Tribunal, the decision of 24 April 1991, that her classification appeal was time-barred. In its Judgement No. 552 rendered on 19 June 1992, the Tribunal held that the application was receivable, and retained "jurisdiction of the application for consideration of the merits following submissions by the parties with respect thereto."

On 18 December 1992, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. Failure by the Respondent to classify the Applicant's post at the G-7 level, since 1972, violates the Applicant's rights to equal pay for equal work.

2. The Applicant received a commitment from her supervisors, that the Respondent would classify her post at a higher level. This commitment was not honoured.

Whereas the Respondent's principal contentions are:

1. The classification of the Applicant's post at the G-5 level was a proper exercise of administrative discretion that complied with the applicable instructions. The classification level that resulted from this process did not violate the rights of the Applicant.

2. No commitments were made by the Administration which would entitle the Applicant to a classification level different from that resulting from the application of the regular classification standards.

The Tribunal, having deliberated from 22 October to 3 November 1993, now pronounces the following judgement:

I. The Applicant comes to the Tribunal pursuant to Judgement No. 552, in which the Tribunal ruled that the Applicant's claims were not time-barred and that her case could be examined on its merits. This being so, the Tribunal will examine the Applicant's claims in strict adherence to its decision in Judgement No. 552.

II. In this context, the Tribunal recalls that the claim of untimeliness that led to Judgement No. 552, was put forward by the Respondent in his answer to the Applicant's request for consent to direct submission to the Tribunal dated 1 March 1991. In his reply to the Applicant, the Respondent stated: "If the Tribunal considers that your claim is not time-barred, Respondent would agree that the Tribunal could then consider the merits of your appeal against the decision concerning classification of your post No. EG-7-005115 which you encumbered."

III. As a consequence, the only issue before the Tribunal is the decision classifying post No. EG-7-005115 at the G-5 level, since consent was given to the direct submission to the Tribunal of that issue only (article 7.1 in fine of the Tribunal's Statute). Therefore, all claims relating to other issues shall not be considered by the Tribunal.

IV. The Tribunal notes that the proceedings initiated by the Applicant relate to the classification of her post at the G-5 level. Subsequently, by a new administrative decision dated 20 May 1991, that has not been challenged, her post was again reviewed and

classified at the G-6 level. The Tribunal has before it a recourse procedure that is directed against an administrative decision to classify her post at the G-5 level. Despite the new decision to classify her post at the G-6 level, the Tribunal will now examine the validity of the earlier classification decision to classify the Applicant's post at the G-5 level.

V. In doing so, the Tribunal recalls its established jurisprudence and confines itself to ascertaining whether the principles of due process were respected and whether the decision was free from prejudice or other extraneous factors. The Tribunal notes, in this regard, that the application requests the Tribunal "to examine the administrative procedures, including any irregularities, defects, inconsistencies and contravention of basic principles of good administration, administrative instructions, personnel directives, breach of good faith, as well as any deviation from established practice, which are detrimental to the financial and career prospects of the Applicant." That request goes beyond what is properly before the Tribunal in this case, in involving other issues and events going back as far as 1972. In fact, the Applicant does not identify any material procedural defect in the reclassification exercise by which she claims to have been injured, and the Tribunal finds none. The Tribunal is satisfied that the classification of the Applicant's post was carried out in a valid manner and was not vitiated by prejudice or other extraneous factors.

VI. As for the Applicant's allegations that her post was a G-7 post, in the opinion of various officers connected with her work, the Tribunal recalls that the classification of posts is entrusted by the current regulations to specialized bodies within the Organization, which are not bound by the opinions or the recommendations of these officers.

VII. For the foregoing reasons, the application is rejected in its entirety.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

New York, 3 November 1993

R. María VICIEN-MILBURN
Executive Secretary